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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ARTICLE 15(4) & 16(4) OF THE INDIAN CONSTITUTION IN THE LIGHT OF SUPREME COURT RULINGS

AUTHORED BY - SWATI SHARMA
HIMACHAL PRADESH NATIONAL LAW UNIVERSITY

ABSTRACT

This paper presents a comparative constitutional analysis of Articles 15(4) and 16(4) of the Indian Constitution, highlighting their roles in enabling affirmative action to achieve social justice. Article 15(4), introduced by the First Constitutional Amendment Act, empowers the State to make special provisions for the advancement of socially and educationally backward classes (SEBCs), including Scheduled Castes (SCs) and Scheduled Tribes (STs), primarily in the field of education. In contrast, Article 16(4), a part of the original Constitution, permits reservation in public employment for backward classes inadequately represented in government services. Through landmark judgments of M.R. Balaji v. State of Mysore and Indra Sawhney v. Union of India, the research examines key judicial interpretations that shaped the understanding of these provisions such as the 50% reservation cap, the exclusion of the "creamy layer," and the non-exclusivity of caste as a sole criterion for backwardness. While both articles aim to uplift disadvantaged communities, Article 15(4) is broader in scope and discretionary, whereas Article 16(4) has a narrower focus on employment with mandatory conditions. The work critically evaluates the evolving jurisprudence and **post-Mandal Commission** developments, reinforcing the delicate constitutional balance between equality of opportunity and compensatory discrimination.

Keyword List – Articles 15(4) & 16(4)

1. Constitution of India – Equality Code (Articles 14, 15, 16)
2. Article 15(4) – First Amendment, 1951; Special Provisions; SEBCs; SCs; STs; Education; Scholarships; Hostels; Financial Aid
3. Article 16(4) – Original Constitution; Public Employment; Adequate Representation; Enabling Provision
4. Backward Classes – Identification: caste, occupation, poverty, place of habitation
5. Creamy Layer Doctrine – Means test; exclusion of advanced groups
6. 50% Reservation Cap – Rule of prudence; Balaji case

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7. Reservation in Promotion – Article 16(4A); 77th Constitutional Amendment
8. Judicial Interpretation – Exception vs. classification debate
9. Commissions – Kaka Kalelkar Commission; Mandal Commission (1979, Report 1980)
10. Mandal Recommendations – 27% OBC quota; land reforms; 52% population estimate

Introduction

The Indian Constitution is both a guarantor of equality and a realist about entrenched inequalities. It recognises that formal equality alone cannot dismantle centuries of caste-based, social, and educational deprivation. Articles **15(4)** and **16(4)** embody this constitutional pragmatism, providing two distinct yet interlinked mechanisms for affirmative action.

Article 15(4), introduced by the First Constitutional Amendment in 1951, empowers the State to make *special provisions* for the advancement of socially and educationally backward classes (SEBCs), including SCs and STs, primarily in education but extending beyond mere quotas to scholarships, hostels, and financial aid. Article 16(4), part of the original 1950 text, enables reservation in public employment for backward classes found to be inadequately represented in State services — but only when specific conditions of backwardness and under-representation are met.

This article analyses these two clauses, charting their evolution through landmark Supreme Court judgments such as *M.R. Balaji*, *T. Devadasan*, *State of Kerala v. N.M. Thomas*, *Indra Sawhney (Mandal)*, and *Ashok Kumar Thakur*. It explores the jurisprudential guardrails — from the 50% ceiling to creamy-layer exclusion — and the shifting interpretive stance on whether caste can be a sole criterion for backwardness. It also examines the role of commissions, including Kaka Kalelkar and Mandal, the political and social currents that shaped amendments like Article 16(4A), and the ongoing tension between representational adequacy and efficiency under Article 335.

Focussing the socio-political context, this study argues for a **dynamic, evidence-based affirmative action framework** to truly uplift the disadvantaged without becoming a permanent entitlement, thereby sustaining the Constitution's delicate balance between equality of opportunity and compensatory justice.

While Articles 15(4) and 16(4) of the Indian Constitution are often viewed as parallel

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provisions for affirmative action, these differ significantly in scope, intent, and judicial treatment. This article argues that these clauses rooted in the pursuit of substantive equality have evolved through landmark judgments, legislative interventions, and socio-political movements to become distinct yet complementary tools for dismantling systemic barriers in education and public employment. By critically examining their constitutional origins, interpretative shifts, and practical implications, the article reveals how these provisions embody a dynamic vision of social justice rather than a static quota-based framework.

Additionally, the paper explores the socio-political context behind the emergence of these emergences of these provisions and the ongoing debates around economic criteria of these provisions and the ongoing debates around economic criteria in reservations. It highlights role of expert committees such as the Ram Nandan Committee in refining reservation policies. The interplay of judicial activism and executive policy-making is discussed as a driving force in shaping affirmative action. Finally, the paper calls for a periodic review mechanism to ensure the dynamic relevance of reservation frameworks in India's changing socio-economic landscape.

Backward Classes [Article 15(4)]

Clause (4) of Article 15 is another exception to clauses (1) and (2). It provides: "Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and Schedule Tribes."

Article 15(4) allows the State to make special provision for the advancement of any socially and educationally backward classes of citizens, Including the Schedule Castes and Schedule Tribes. The State is, therefore, free to reserve seats for them in the legislature and services. This Article only allows the State to make special provisions for these classes. It does not confer any right on these classes to compel the State to make such provisions. The provision under this Article is a sort of discretion with the State.

Clause (4) of Article 15 is an enabling provision. It merely confers discretion on the State to make special provisions. It does not impose any obligation on the State to take any action under it.

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The expression *"backward classes"* is not defined in the Constitution. Article 340 of Constitution, however, gives the President the authority to form a Commission to look into the circumstances of India's socially and educationally disadvantaged groups. On receiving the Report of the Commission, the President may specify the classes to be considered as Backward. The expressions "Schedule Castes" and "Schedule Tribes" have been defined under clauses (24) and (25) of Article 366. Article 366 is to be read with Article 341 and 342 for this purpose. *Scope of Clause (4)* of Article 15 Clause (4) of Article 15 helps the State to make special provisions. Special provision for advancement" is a wide expression and should not be construed in a restricted sense as meaning only social and educational advancement. The expression may include many more things besides mere reservation of seats in colleges. It may be by way of financial assistance, medical, educational and hostel facilities, scholarships, free transport concessional or free housing etc.

Under this clause, socially and educationally backward classes and limit of reservation socially and educationally backward classes and the limit of reservation are to be determined.

The scope of Article 15(4) is discussed in Balaji v. State of Mysore.

Balaji v. State of Mysore[1];

On 13 July, 1962, Mysore Government issued an order. The SEBCS and Schedule Tribes were granted preference for 68% of the seats in all engineering and medical colleges and institutions in the state. Late backward classes and more backward classes were the two groups into which the SEBCs were once more separated. Thus only 32% seats were for general candidates. This order was challenged by candidates who secured more marks than those admitted under the order. Though qualified on merit -, they had failed to get admission only due to this order.

Issue: Extent of Special provision which the States can make under Article 15(4) of the Constitution.

Decision: The Supreme Cour held the Order bad amounting it to be a fraud upon the Constitution, plainly inconsistent with Article 15(4), While striking down the said Order, the Court enunciated the following principles:

1. Clause (4) of Article 15 is a proviso or an exception to clause (1) Article 15 and to clause (2) of Article 29.

[1] Balaji v. State of Mysore (AIR 1963 SC 649)

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2. Backwardness must be both socially and educationally oriented to qualify under Article 15(4). A caste in Hinduism may be pertinent when assessing a class of people' socioeconomic backwardness, it cannot be used as the only and most important criterion. The caste system is rejected by Muslims, Christians, and Jains and they are not subject to the test caste. As the contested order's categorization of all backward classes was based exclusively on caste, it was flawed.

   Poverty would the main determining factor of social backwardness of a class besides occupation and place of habitation. The Court thus invalidated the test of social backwardness which was based predominantly if not solely on the caste.
3. The reservation stated in Article 15 Clause (4) ought to be sonable. It shouldn't be in a way that undermines or nullifies the primary equality rule of clause (1). Although the precise acceptable percentage of reservations cannot be predicted, these should be less than 50% of the total. An executive order may be used to make a provision under Article 15(4) without legislation.
4. Further categorisation of backward classes into backward and more backward is not warranted by Article 15(4).

Finally, Court said that the state would not be justified in ignoring the rest of the society while promoting the welfare of the backwards and national interest would suffer if qualified and competent students were excluded from admission into institution of higher education.

In ***Indra Sawhney v. Union of India***[2], commonly known as Mandal Commission Case, the matter was settled by the majority of the SC, holding that caste can be an important or even sole factor in determining the social backwardness and that poverty alone cannot be such a criterion.

The Court explained the rational in the following words: "That the Dalits (SC) and Tribes (ST) had suffered social and economic disabilities recognised by Articles 17 and 15(2) and as a consequence, they had become socially, culturally and educationally backward. The object of reservation permissible under Article 15(4) and Article 16(4), the Court said, was to remove these handicaps, disadvantages, sufferings and restrictions, to which the members of the Dalits or Tribes or OBCs, were subjected to and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities."

[2] Indra Sawhney v. Union of India AIR 1993 SC 477

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The Court, thus, ruled that a candidate born in forward caste and transplanted in backward caste by adoption or marriage or conversion, would not be eligible to the benefits of reservation either under Article 15(4) or 16/4). The recognition of the candidate by the members of backward class, would not be relevant for his entitlement to the reservation benefits.

The question whether a person belonging to a Schedule Caste in relation to a particular State, would be entitled to a benefit or concession allowed to Schedule Castes candidates in employment in any Union Territory where such person has migrated from other State, has been referred for determination to a larger Bench.

2ND EXCEPTION: RESERVATION FOR BACKWARD CLASSE [Article 16(4)]

Clause (4) of Article 16 expressly permits the State to make "provision for the reservation of appointments or post in favour of any backward clause or citizens which, in the opinion of the State, is not adequately represented in the services under the State."

The expression "backward class of citizens" in Article 16(4) includes the Schedule Castes and Schedule Tribes. Article 16(4) is an enabling provision and not an exception to Article 16(1); Reservation for a backward class is not a mandate prerogative of the State.

Clause (4) does not cover the field covered by clauses (1) & (2) of Article 16. Under clause (1) reservations can be made for physically handicapped, army personnel, and freedom fighters. Thus, reservation under Article 16(1) cuts across all classes, reservations being on considerations other than that of backwardness. Article 16(4) is available only to backward class of citizens including Hindus, Muslims, Sikhs, Christians, Buddhists, and Jains. State cannot reserve all or even a majority of appointment for backward classes.

The "reservation" in Article 16(4) implies a separate quota reserved for a special category of persons implying selection of less meritorious person. "reservation" per se does not have the consequence of ipso facto applying the entire mechanism underlying the Constitutional concept of a protective reservation specially designed for the advancement of any socially and educationally backward class of citizens or for the Schedule Castes and Schedule Tribes to enable them to enter and adequately represent in various fields.

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Thus, Article 16(4) applies only if the class of citizens is backward i.e. socially and educationally and the said class is not adequately represented in service of the State.

In ***Balaji's v. State of Mysore***[3], the Supreme Coun held that the "caste" of a person cannot be the sole test for ascertaining whether a particular class is backward class or not. Poverty, occupation, and place of habitation may all be relevant factors. Although caste cannot be the only factor used to assess a class's backwardness, a caste as a whole may be included to the list of backward classes if they are socially and educationally backward. It however does not mean that once a caste is considered backward, then it will remain backward for all the times. The Government should review the test and if a class reaches the state of progress where reservation is not necessary, it should remove that class from the list of Backward Classes.

Article 16(4) must be interpreted in the light of Article 335 which says that claims of Schedule Castes and Schedule Tribes shall be considered constituently while upholding the efficiency of administration. The reservations for backward classes should not be unreasonable and should be considered having regard to the employment opportunities of the general public.

In ***T. Devadashan v. Union of India***[4], popularly known as Carry forward (back log unfilled vacancies) Rule Case, the Sc considered the scope of Article 16(4). In this case, reservation of vacancies for candidates belonging to Schedule Castes & Schedule Tribes was struck down by the court as invalid and unconstitutional.

As a result of this rule, in the year 1961, out of 45 vacancies, 29 went to the candidates belonging to Schedule Castes & Schedule Tribes amounting to about 64% of reservation. The majority of the Sc following Balaji v. State of Mysore, (AIR 1963 SC 649), declared that reservation exceeding 50% in a single year would be unconstitutional and invalid. The Court held that such excessive reservation will destroy the guarantee of equality of opportunity contained in Article 16(1) Following Devdashan case, the Government modified the rule and provided that in any recruitment year the number of reserved vacancies and the carried forward reserved vacancies shall not exceed 45% of the total vacancies.

A case related to the content and reach of Articles 16(1), 16(2), 16(4) and interrelation of

[3] Balaji's v. State of Mysore AIR 1963 SC 64
[4] T. Devadashan v. Union of India AIR 1964 SC 179

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Articles 14, 15, 16 is that of ***State of Kerala v. N.M. Thomas***[5]

The Kerala Government framed rules for promotions from the lower division clerks (LDCs) to the higher cadre of upper division clerks (UDCs) based on the passing of a departmental test within two years of the introduction of this test. Failure to pass the test within 2 years disentitled the LDC promotion in future. However, by an order issued subsequently under the said Rule, the members of Schedule Castes/Schedule Tribes were granted a longer period and were given two extra years to pass the test. This exemption was challenged as discriminatory under Article 16(1).

Issue was whether it was permissible to give preferential treatment to SC & Schedule Tribes under 16(1) i.e. outside the exception clause (4) of Article 16.

The Sc by a majority consisting of five judges, Ray (C.J.) Mathew, Beg, Krishan Iyer and Fazal Ali J. held these exemptions and promotions as valid whereas Khanna and Gupta JJ dissented. Preference to the employees belonging to Schedule Castes/Schedule Tribes by allowing them an extended period of 2 years for passing the departmental test for promotion, was a just and reasonable classification provide equal opportunity for all citizens.

Ray C.J., stated categorically that Articles 14, 15 and 16 form part of a string constitutionally guaranteed rights supplementing each other.

Article 16(1) envisaged equality between members of same class of employees but not equality between members of separate, independent classes. Article 16, the court added, permitted reasonable classification of the employees in matters relating to employment or appointment to any office, including promotion to a selection post.

Article 16(1) through the expression "equality" relates to all matters of employment from appointment through promotion, and termination to payment of pension and gratuity.

Nevertheless, a new interpretation of Article 16(1) was made by the majority decision in this case.

[5] ***State of Kerala v. N.M. Thomas*** AIR 1976 SC 490)

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The Mandal Commission

The Constitution of India, which came into force in 1950, mandated 15% reservation for scheduled castes and 7.5% for scheduled tribes. In 1951, the first amendment in the Indian Constitution under Article 15(4) empowered the state to make any "special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes and the Schedule Tribes." This led to the institution of the first backward class commission, headed by Kaka Kalelkar. The commission submitted its report in 1955, but failed to make an impact in any major way.

Second backward class on commonly called Mandal Commission (headed by Bindeshwari Prasad Mandal) was appointed by the Government of India (Janta Party Government) in terms of Article 340 on January 1, 1979 to establish the standards for classifying people as socially and educationally backward and to suggest actions for the advancement of SEBCs, such as the need to reserve seats for them in government positions. Under the three main headings of social, educational, and economic backwardness, the commission developed eleven criteria for assessing social and educational backwardness. The commission found that there SEBCs had very low presence in both educational institutions and employment in public services. The commission submitted its report in December 1980. It had identified 3743 castes as socially and educationally backward classes. One of the major recommendations of the commission was that, excluding the Schedule Castes (Schedule Castes) and Schedule Tribes (Schedule Tribes) backward classes constitute nearly 52 percent of the population and therefore 27 percent government jobs should be reserved for them so that total reservation for all Schedule Castes, Schedule Tribes and OBCs amounts to 50 percent. Land reforms were recommended to improve the conditions of OBCs. In the meantime, the Janta Party Government collapsed due to internal differences and Congress Party headed by Indira Gandhi came to power which did not implement Mandal Commission report.

Indra Sawhney v. Union of India[6];(Mandal Commission Case)

In 1989, the Janta Dal-led National Front Government implemented the Mandal Commission's recommendation, reserving 27% of government jobs for SEBCs through an Office Memorandum (O.M.) issued on August 13, 1990. This sparked nationwide protests and a writ petition challenged the O.M., leading to a stay by a five-judge bench. After the government's

[6] Indra Sawhney v. Union of India (AIR 1993 SC 477)

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fall, the Congress, under P.V. Narasimha Rao, issued a new O.M. on September 25, 1991, adding preference for poor SEBCs within the 27% quota, and 10% reservation for economically backward sections of higher castes. The case was referred to a nine-judge Constitutional Bench.

The nine Judges Constitution Bench of the Sc comprising of M.H. Kania C.J., Venkatachaliah, Ahmadi, Jeevan Reddy, Pandian, Sawant, Thommen, Kuldip Singh, Sahai, JJ. Reddy held that the decision of the Central Government to reserve 27 percent government jobs for backward classes is constitutionally valid.

The dissenting judgment given by T.K. Thommen, Kuldip Singh and R.M. Sahai JJ struck down the two O.Ms. issued by the Union Government as unconstitutional. It held also that Mandal Report is unconstitutional and recommended for the appointment of another commission for identifying the SEBCs of citizens.

Issues and Decision

1(a) Whether the 'provision' in Article 16(4) must necessarily be made by the Parliament/Legislature?

The Court held the very use of word "provision" in Article 16(4) is significant. Whereas clauses (3), (4), (5) of Article 16 and clauses (2) to (6) of Article 19 use the word "law", Article 16(4) uses the word "provision". Regulation of service conditions by orders and rules made by the executive was a well-known feature at the time of framing of the Constitution. Probably a deliberate departure has been made in the clause (4). Accordingly, agreed with Balaji, the "provision" contemplated by Article 16(4) should not necessarily be made by the parliament/legislature Such a provision can be made by the executive local Bodies, statutory corporations and other instrumentalities of the state falling under Article 12 of the Constitution competent to make such a provision, if so advised.

1(b) Whether an Executive order made in terms of Article 16(4) is effective and enforceable by itself or whether it is necessary that the said "provision" is enacted into a law made by the appropriate Legislature under Article 309 or is incorporated into and issued as 1 rule by the President/Governor under the proviso to Article 309 for it to become enforceable.

An executive order that enacts a provision under Article 16(4) is enforceable as soon as it is made and issued, the court ruled. It is clearly established by the Court's rulings that, absent regulations established under Article 309's proviso, the relevant Government may, by executive

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order, specify the terms of employment for its workers. The government may give orders or instructions regarding subjects on which the rules are silent, including the cases where regulations are adopted under the proviso to Article 309.

2(a) Whether clause (4) of Article 16 is an exception to clause (1)?

In Balaji it was held that "Article 15(4) has to be read as proviso or an exception to Articles 15(1) and 29(2)". In Devadasan, " Court has already held that clause (4) of Article 16 is by way of a proviso or an exception to clause (1)". This view, however, received a severe setback in State of Kerala v. N.M. Thomas where majority held that Article 16(4) is not an exception to Article 16(1) but that it was merely an emphatic way of stating a principle implicit in Article 16(1).

Hence, the view in Thomas is the correct one. Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may be necessary in certain situations to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate (emphasize) inequality. The "backward class of citizens" are classified as a separate category deserving a special treatment in the nature of reservation of appointments/posts in the services of the state. Accordingly, we hold that clause (4) of Article 16 is not an exception to Clause (1) of Article 16. It is an instance of classification implicit in and permitted by clause (1). Thus Court overruled Balaji and Devadasan case and approved Thomas case. Regarding the view expressed in Balaji and Devdasan, it must be remembered that at that time it was not yet recognised by the Court that Article 16(1) being a facet of Article 14 does implicitly permit classification. Once this feature is recognised, the theory or clause (4) being an exception to clause (1) became untenable.

2(b) Whether Article 16(4) is exhaustive of the concept of reservations in favour of backward classes?

The Court held the relevant words "any provision for the reservation of appointment or posts" in Article 16(4) does not contemplate only one form of reservation namely reservation simplicitier. The Court explained that Article 16(4) permitted not only reservation of appointment/posts which was highest form of special provision, but also preferences, concessions and exemptions which are lesser forms of special provision.

Court further agreed with the view taken by Beg. J. in Thomas case and held Clause (4) of

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Article 16 is exhaustive of the special provisions that can be made in favour of "the backward class of citizens". Backward classes having been classified by the Constitution itself as a class deserving special treatment and the Constitution having itself specified the nature of special treatment, it should be presumed that no further classification, or special treatment is permissible in their favour apart from or outside of clause (4) of Article 16

2(c) Whether Article 16(4) is exhaustive of the very concept of reservations? In other words, whether any reservations can be provided outside clause (4) of Article 16.9?

Court held that clause (4) of Article 16 is not exhaustive of the concept of reservations. It is exhaustive of reservations in favour of backward classes alone. According to majority view, Article 16(1) permitted the making of reservation of appointments/posts which should be made only in exceptional situations and wherein the state is called upon to do so in public interest. For e.g. reservation of appointments/posts would be permissible under Article 16(1) for the wards of military personnel or political sufferers or any other class except for backward classes. Clause (4) of Article 16 is not an exception to clause (1). It is an instance and an illustration of the classification inherent in clause(s). Article 16(4) is exhaustive of the subject of reservation in favour of backward classes. Article 16(4) is not exhaustive of very concept of reservation. Reservation for other classes can be made under Article 16(1).

Q. 3(a) Meaning of the expression "backward class of citizens" in Article 16(4).

Court held that the expression "backward class" is not defined in the Constitution. The accent of Article 16(4) is on social backwardness. From review of the previous case-laws in the area, the Court has concluded that the judicial opinions emphasize the integral connection between caste, occupation, poverty and social backwardness. Social, educational and economic backwardness are closely intertwined in the Indian context. A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Among non-Hindus, these are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectives for the purposes of Article 16(4).

Q. 3(b) Identification of "backward class of citizens".

The court held that for identification of backward classes, one has to begin from somewhere with some group, class or section. Neither the constitution nor the law prescribes the procedure or identification method of backward classes. Nor it is possible or advisable for the court to lay

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down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method or procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. The caste may be used as a criterion because caste is a social class in India. But caste cannot be the sole criterion for reservation. Reservation is not being made under Article 16(4) in favour of a caste but a backward class. Once a caste signifies, the criteria of backwardness, it becomes a backward class for purposes of Article 16(4).

Q. 3(c) Whether the backwardness in Article 16(4) should be both social and educational?

The Court held that backwardness under Article 16(4) need not be social as well as educational as is the case under Article 15(4). Article 16(4) does not contain the qualifying words "socially and educationally" as does Article 15(4). It is not correct to say that "backward class of citizens" in Article 16(a) are the same as the "socially and educationally backward classes" in Article 15(4). It is much wider, because accent in Article 16(4) is on social backwardness of course, social, educational and economic backwardness are closely intertwined in the Indian Context. The court further held even Article 340 employ the expression "socially and educationally backward classes". The reason for the exclusion of these qualifying words, was that Article 16(4) included therein Schedule Castes/Schedule Tribes and all other backward classes of citizens including the socially and educationally backward classes. It followed that certain classes might not qualify for the Article 15(4) but might qualify for the Article 16(4). Also, that Article 16(4) applied to a much larger class than the one contemplated by Article 15(4) or Article 340. Thus court overruled Balaji's case on this point.

Q. 3(d) Means-test and Creamy layer.

Means-test signifies imposition of an income limit, for the purpose of excluding persons (from the backward class) whose income is above the said limit. This is often referred as creamy layer argument.

Eight of the nine judges contended that reservations given for OBCs should not include the creamy layer. Three main explanations were offered. Firstly, a group needs to be a class to be eligible and a class must be homogenous in order to qualify. If there are significant differences among its members, it loses its identity as a class. Secondly, the goal of reservation would be undermined as the privileged members of these classes would profit the most from it unless they were excluded. Thirdly, it would be considered unfair treatment and a violation of Article

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14 to keep groups that have advanced past backwardness in a backward class. Those members of the backward class who are far too advanced socially which, in the context necessarily means economically and may also mean educationally, should be excluded from the backward classes After such exclusion the backward class will be truly backward class in fact such exclusion will benefit the truly backward. Court further held that the basis of exclusion should not merely be economic, unless of course, "the economic development is so high that it necessarily means social advancement."

After this, Court instead of laying down the test to identify creamy layer itself, it directed the Government to specify the basis of exclusion-whether on the basis of income, extent of holding or otherwise.

Court further held that non-exclusion of creamy layer in backward clan will be violative of Articles 14, 16(1) and 16(4). If under the guise of elimination of the creamy layer, the legislature makes a law which is ne indeed a true elimination but is seen by the court to be a mere cloak, then the Court will strike down such a law as violative of Article 14, 16(1) and 164 and of the principle of separation of powers.

Q. 3(e) Whether a class should be situated similarly to the Schedule Castes/Schedule Tribes for being qualified as a Backward class?

Court held it is not necessary for a class to be designated as a backward class that it is situated similarly to the Schedule Castes/Schedule Tribes. Court held it is not correct to say that the backward class contemplated by Article 16(4) is limited to the socially and educationally backward classes referred to in Article 15(4) and Article 340. It is much wider.

Q. 3(f) Adequacy of Representation in the Services under the State.

Court held the adequacy of representation of a particular class in the services under the State is a matter within the subjective satisfaction of the appropriate Government. The judicial scrutiny in that is the same as in other matters within the subjective satisfaction of an authority.

Q. 4(a) Whether backward classes can be identified only and exclusively with reference to the economic criterion?

Court held a backward class of citizens cannot be identified only and exclusively with reference to economic criteria.

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Article 16(4) is not aimed at economic uplift or alleviation of poverty. Mainly social and therefore educational and economic backwardness has to be taken into account.

In Balaji's case, court observed that from an economic point of view, classes are backward when they do not make effective use of resources, cannot maintain standard of living, etc. (e.g. in Hilly areas). However, rural areas are not homogeneous class by itself, as standards/occupations of people are different. Poverty alone can't be basis of classification as poverty is found in all the parts of India.

Backward class of citizens in Article 16(4) can be identified on the basis of caste and not only on economic basis. A caste can be quite often is a social class in India and if it is backward socially, it would be a backward class for the purpose of Article 16(4). Though caste alone can't be taken into consideration for purposes of identification of backward classes (occupation groups, classes and sections of people are other important criteria). There are classes among non-Hindus, Muslims, Christians, etc. and if they are backward socially, they are entitled to reservation. However, caste is not the sole criterion.... Muslims, Christians, Jains do not recognise castes, how one decide social backwardness in them.

Q. 4(b) Whether a backward class can be identified on the basis of occupation-cum-income without reference to caste?

In Chitralekha, this Court held that such an identification is permissible. It is, of course, permissible for the Government or other authority to identify a backward class of citizens on the basis of occupation-cum-income, without reference to caste, if it is so advised. Indeed, there may be some groups or classes in whose case caste may not be relevant at all. For e.g., agricultural labourers, rickshaw-pullers/drivers, street hawkers etc. may well qualify for being designated as Backward Classes.

Q. 6(a) Whether the 50 percent rule enunciated in Balaji a binding rule or only a rule of caution or rule of prudence?

Court held under Article 16(4) the reservation in favour of the backward classes (Schedule Castes, Schedule Tribes and OBCs) should not exceed 50 percent of the appointments in a year. In Balaji case, Court observed that Article 15(4) only enables the State to make special and not exclusive provisions for backward classes. Clause (4) is only an enabling provision and doesn't impose any obligation on the State to take any special action. It merely confers a discretion to

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act, if necessary. Advancement of the rest of society can't be ignored altogether in a zeal to promote welfare of backward classes.

0.*6(b) Whether the 50 percent rule, if any, is confined to reservations made under clause (4) of Article 16 or whether it takes all types of reservations that can be provided under Article 16?*
Court held the rule of 50 percent shall be applicable only to reservations proper, it shall not be, indeed, cannot be, applicable to exemptions, concessions or relaxations, if any, provided to Backward Classes under Article 16(4).

0.6(c) While applying 50 percent, if any, whether a year should be taken as a unit or whether the total strength of the cadre be looked to?
Court held for the purpose of applying the rule of 50 percent, a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be. Article 16(4) speaks of adequate separations and not proportionate representation. The adequacy of representation is not to be determined merely on the basis of the over all numerical strength of the backward classes in the services. For determining this adequacy; their representation at different levels of administration and in different grades has to be taken into consideration.

Q. 6(d) Was Devadasan correctly decided?
In Devdashan, this rule of 50 percent was applied to a case arising under Article 16(4) and on that basis the carry forward rule was struck down.
The Court held that 'carry forward rule' (to carry forward the unfilled vacancies in the next year) is valid provided it shouldn't result in breach of 50 percent rule. The Court thus overruled Devdashan.

Q. 7. Whether clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well?
The Court, however, recognized that it would be permissible for the State extend concessions and relaxations to the members of reserved categories in the matters of promotion without compromising the efficiency of the administration Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision of this question shall operate only prospectively

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and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion-be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12, such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service class or category, it is necessary to provide for direct recruitment therein, shall be open to it to do so. It would not be impermissible for the State extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration

Note: The above rule laid down by the Sc has been diluted as regards the members belonging to the Schedule Castes and the Schedule Tribes, by the Constitution (Seventy-seventh Amendment) Act, 1995. The Constitution (Seventy-seventh Amendment) Act, 1995 has added a new Clause (4A) to Article 16 which provides:
Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Schedule Castes and the Schedule Tribes which, in the opinion of the State are not adequately represented in the services under the State.

Q. 10. Whether the distinction made in the second Memorandum between 'poorer sections' of the backward classes and other permissible under Article 16?
Court held the distinction made in the office memorandum dated September 25, 1991 between 'poor sections and other among the backward classes is not invalid, if the classification is understood and operated as based upon relative backwardness among the several classes identified as OBCs.

Q. 11. Whether the reservation of 10 percent of the posts in favour of other economically backward sections of the people who are not covered by any of the existing schemes of réservations' made by the office memorandum dated September 25, 1991 permissible under Article 16?
The reservation of 10 percent of the posts in favour of 'other economically backward sections

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of the people who are not covered by any of the existing schemes of the reservation made in the impugned office memorandum date September 25, 1991 is constitutionally invalid and is accordingly struck down

Post Mandal Developments

In ***Ashok Kumar Thakur v. State of Bihar***[7], the Sc quashed the economic criteria laid down by the Bihar and Uttar Pradesh Governments for identifying the affluent sections of the backward classes (creamy layer), excluding them for the purpose of job reservation, and held that the criteria for identification of "creamy layer is violative of Article 16(4) and Article 14 and against the law laid down by this Court in Mandal case. The Sc in the Mandal case had held that a person belonging to a backward class who becomes a member of the IAS, IPS or any other All India Service could not seek benefits of reservation for his children.

The court held that the additional conditions laid down by the States of Bihar and Uttar Pradesh have no nexus with the object sought to be achieved. Bihar and U.P. acted arbitrarily and in utter violation of the law laid down by this court in the Mandal case. It is difficult to accept that in India where the per capita income is Rs. 6,929 (1993-94), a person who is the member of the IAS and a professional who is earning less than Rs. 10 lakhs per annum is socially backward. The Sc approved the criteria laid down by the Government of India in para 2 (c) read with the Schedule of the office memorandum quoted in the judgment.

The court directed both Bihar and UP to follow the criteria laid down by the Government of India for present academic year to lay down their own criteria for the subsequent years in accordance with law.

Indra Sawhney v. Union of India (II)[8]***;***

In the Mandal case, a nine Judges Bench of the Sc held that the reservation to backward classes in Government jobs could be given only after excluding "creamy layer" (forward classes) in backward classes. The Kerala State did not implement the directions of the Sc for more than 3 years. Instead of implementing the Sc's directions, the State of Kerala passed an Act called The Kerala State Backward Classes (Reservation of Appointments or Posts in Services) Act, 1995 which declared that having regard to "known facts" in existence in the State of Kerala there are

[7]Ashok Kumar Thakur v. State of Bihar (1995) 5 SCC 403
[8] Indra Sawhney v. Union of India (II)AIR 2000 SC 498

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no socially advanced categories in any Backward Classes and they would continue to be entitled to reservation under clause (4) of Article 16 of the Constitution. The Nair Service Society, Kerala, challenged the validity of the State of Kerala Act and requested the Court to declare it unconstitutional and violative of Articles 14, 16(1) and 16(4) of the Constitution. The State of Kerala passed the Act in 1995 but it was given retrospective effect from 1992. The State of Kerala sought for the extension of time for setting up a Commission for identifying the creamy layer but did not do so for three years. The Sc directed the Kerala High Court to appoint a committee to identify "creamy layer" under the chairmanship of a retired Judge of the High Court. The Sc directed the State Government to extend cooperation to the Committee. The Kerala High Court appointed a committee for identifying "creamy layer under the chairmanship of K.J. Joseph J. The Committee appointed by the Kerala High Court submitted its report to the Sc on 4-8-1997 identifying creamy layer.

The Sc (M. Jagannadha Rao, D.P. Wadhawa and M. B. Shah, J.J.) held that The Kerala State Backward Classes (Reservation of Appointments or Posts in Services) Act, 1995 is discriminatory and violative of Articles 14, 16(1) and 16 (4) and, therefore, unconstitutional and invalid. The "creamy layer" in the backward classes is to be treated "on par" with the forward classes, and is not entitled to the benefits of reservation, and if the "creamy layer" is not excluded there will be discrimination and violation of Articles 14 and 16 (1) inasmuch as equals (forwards and creamy layer of backward classes) cannot be treated unequally. Likewise, non-exclusion of creamy layer will also be violative of Articles 14, 16(1) and 16 (4) of the Constitution since unequals (creamy layer) cannot be treated as equals that is to say that, equal to the rest of the backward class. The Court held that any executive and legislative action refusing to exclude the creamy layer from the benefits of reservation will be violative of Articles 14 and 16(1) and 16 (4) of the Constitution.

THESIS & POSITION

Articles 15(4) and 16(4) of the Indian Constitution are often spoken of in the same breath as “reservation clauses,” but they are far more nuanced than that label suggests. They represent two distinct yet complementary pillars of India’s affirmative action framework:

- Article 15(4) – born of the First Amendment – is a *discretionary* and *broad-gauge* tool allowing the State to design special provisions for the “advancement” of socially and educationally backward classes (SEBCs), including SCs and STs, with education as its central but not exclusive domain.

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- Article 16(4) – part of the original 1950 Constitution – is a *conditional*, targeted instrument for reservation in public employment for backward classes that the State finds inadequately represented in its services.

T*ogether*, these provisions are a two-track architecture for substantive equality one aimed at building capabilities upstream (education and allied opportunities) and the other at ensuring fair representation downstream (public service appointments). This framework is disciplined by judicially crafted guardrails such as the 50% reservation cap, the creamy-layer exclusion, proportionality, and the efficiency mandate under Article 335.

The purpose of these provisions is not to fossilise quota entitlements, but to act as dynamic, evidence-based corrective measures periodically reviewed so that they remain bridges to equality, not ceilings on ambition. The significance of this stance is that it rejects both extremes: unlimited, caste-only reservation and the reduction of backwardness to mere poverty.

CRITICAL REVIEW

The doctrinal framework is articulated with due regard to the relationship between Articles 14, 15, and 16—the so-called ‘equality code’. The text is attentive to how the addition of 15(4) by the First Amendment and the evolution of 16(4) as a specific instance of affirmative action both supplement and animate the general equality guarantees, buttressing the state’s power to employ protective discrimination. The document is especially nuanced in unpacking how the jurisprudence evolved from viewing these provisions as ‘exceptions’ to the equality principle, towards understanding them as positive enablers or facets of substantive equality, paralleling key shifts identified in seminal decisions like N.M. Thomas and Indra Sawhney.

An area of strength is the incorporation of comparative constitutional perspectives, albeit with limited depth. The document references, though briefly, the international discourse on affirmative action and draws occasional analogies to the U.S. context, but the real comparative muscle lies in its granular excavation of intra-Indian constitutional debates and the fertile dissenting opinions within landmark case law. The author adeptly refers to the role of legislative intendment, the doctrine of reasonable classification, and the requisite of rational nexus, which are foundational to Indian constitutional doctrine in equality jurisprudence.

Nonetheless, the framework could be further enriched by a deeper integration of intersectionality and a sociological lens, especially as contemporary debates increasingly

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recognize that backwardness and discrimination are multi-layered phenomena, often mediated by gender, region, and economic status alongside caste. The absence of a sustained analysis of how these axes of disadvantage intersect in the Indian context something recent Supreme Court rulings and some state policies have striven to address through sub-categorization limits the theoretical ambition of the document.

JUDICIAL INTERPRETATION OF ARTICLE 15(4)

The document provides a penetrating account of the judicial trajectory under Article 15(4), paying close attention to the initial fissure marked by the State of Madras v. Champakam Dorairajan decision (1951), which precipitated the First Amendment and the addition of Article 15(4). The analysis of M.R. Balaji v. State of Mysore (1963) is particularly detailed. The document details how the Supreme Court in Balaji articulated a crucial doctrinal threshold that the reservation should not be based solely on caste, must serve definitions of social and educational backwardness, and should not exceed the general 50% ceiling unless justified by extraordinary circumstances.

It recognises the tensions inherent in state attempts at overbroad or mechanical applications of the backward class concept, referencing with approval the court's insistence on periodic review, scientific criteria, and avoidance of arbitrary or excessive reservations. The text closely tracks the evolution of legal reasoning in subsequent cases, effectively noting how later decisions ranging from Rajendran to Ashok Kumar Thakur have both invoked and problematized the Balaji logic as new political and social realities emerged.

Judicial Interpretation of Article 16(4)

The analysis traces the pivotal shift from treating 16(4) as a mere enabling provision and an exception to the guarantee of equality of opportunity under Article 16(1) as reflected in early cases like T. Devadasan—to the more substantive reading of it as a facet of equality, crystallized in N.M. Thomas (1976) and confirmed by the nine-judge bench in Indra Sawhney (1992).

Indra Sawhney is particularly sophisticated in its distillation of the core propositions i.e., caste can, but need not always, be a marker of backwardness; the introduction of the "creamy layer" exclusion for OBCs; the 50% cap on reservation, save exceptional situations; prohibition of reservations in promotions (later modified by legislative amendments and judicial

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accommodation); and the doctrinal consistency between 16(1) and 16(4). The analysis exposes the persistent lack of clarity and subsequent legal contestation of the16(4) as enabling or as a right-creating provision, especially with regard to judicial review of government inaction on reservations, as observed in cases like Ajit Singh and Mukesh Kumar.

Later case laws especially M. Nagaraj's rigorous criteria for reservations in promotions (quantifiable data on backwardness, under-representation, no compromise of administrative efficiency) demonstrates the counterweights the court has constructed between social justice and meritocracy, and the resulting friction points in contemporary Indian equal protection law. A notable strength here is the document's ability to synthesize constitutional text, legislative history, and developing judicial standards into a nuanced account of constitutional doctrine and practice.

Synthesis of Landmark Cases: Balaji, Devadasan, N.M. Thomas, Indra Sawhney, and Ashok Kumar Thakur

A major contribution of the document is its sustained engagement with the corpus of landmark Supreme Court decisions, integrating doctrinal evolution with critical reflection.

M.R. Balaji is appraised for its foundational role in delimiting the contours of reservations as truly remedial and not a vehicle for reverse discrimination or perpetuation of caste identities. Although this case was later critiqued for imposing judicially invented ceilings, its enduring impacts on reservation ceilings and criteria echo in later debates.

T. Devadasan receives attention for its invalidation of the carry-forward rule where it led to excessive reservation, reinforcing the ceiling principle and emphasizing fair competition and efficiency a theme that continues to resonate in contemporary jurisprudence.

N.M. Thomas marks a doctrinal milestone, as the court, through both majority and concurring opinions, identified 16(4) as a facet of 16(1), infusing the equality code with a substantive vision of affirmative action grounded in "real equality," and thus moving away from exception-based rationale. The judgment's theoretical sophistication is matched by its practical import in opening distinct avenues for state policy.

Indra Sawhney is treated as the "linchpin"—and deservedly so. The document's synthesis is

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adept in connecting the judgment's key holdings to the evolution of both policy and doctrine: introducing the "creamy layer" to target benefits to the most disadvantaged, delineating the horizontal vs. vertical reservation dichotomy, and clarifying that economic criteria alone are not sufficient for identifying backwardness. The document also critiques subsequent deviations and sustained contestations around core propositions (e.g., on promotions and the creamy layer for SC/STs).

Ashok Kumar Thakur is discussed as an extension into educational reservations post-93rd Amendment, upholding the constitutionality of OBC reservations in central educational institutions, and affirming the application of creamy layer and graduation-as-threshold doctrines.

Conclusions

Articles 15(4) and 16(4) reveal the Indian Constitution's layered approach to affirmative action balancing the ideals of equality with the realities of social disparity. Article 15(4), born out of the First amendment, empowers the state to make special provisions for socially and educationally backward classes, primarily in education. Article 16(4), meanwhile, focuses on public employment and hinges on the twin conditions of backwardness and inadequate representation.

The journey of Articles 15(4) and 16(4) through seven decades of constitutional practice reveals a living framework — one constantly recalibrated by the Supreme Court to ensure that affirmative action remains **a bridge to equality, not a ceiling on merit**. Article 15(4) retains its breadth, allowing educational and allied advancement measures that go beyond seat reservations, while Article 16(4) operates within a narrower but vital sphere of ensuring adequate representation in public employment.

The Court's interventions from *Balaji*'s rejection of caste-as-sole-criterion, to *Indra Sawhney*'s creamy-layer doctrine and reaffirmation of the 50% cap, to post-Mandal scrutiny of state compliance have refined the permissible scope of these provisions. These rulings underscore three enduring principles that backwardness is multi-dimensional; that benefits must be targeted to those who remain disadvantaged; and that administrative efficiency under Article 335 cannot be sacrificed at the altar of representation.

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The socio-political milestones from the Mandal Commission to the 77th Amendment allowing promotions for SCs/STs illustrate how executive policy and judicial interpretation are locked in a dialogue, each shaping the contours of affirmative action. The recognition that 16(4) is not an "exception" but an "illustration" of equality in 16(1) affirms that substantive equality sometimes requires differential treatment to level the playing field.

The enduring legitimacy of Articles 15(4) and 16(4) depends on **periodic, data-driven review**. Reservations must remain flexible, responsive to changing social realities, and closely monitored to prevent capture by the socially advanced within backward classes. In doing so, these can serve as finely tuned constitutional instruments honouring the framers' vision of an India where opportunity is decoupled from birth, and justice is not a static promise, but a living, evolving practice.

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